STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2168

State of Minnesota,
Respondent,

vs.

Anhdung Cong Tran,
Appellant.

Filed December 3, 2012
Affirmed
Stauber, Judge

Stearns County District Court
File No. 73CR113320

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

Appellant challenges his conviction of malicious punishment of a child and two counts of domestic assault, arguing that (1) the evidence was insufficient to sustain the malicious-punishment conviction when appellant's actions amounted to reasonable force to discipline the child and (2) the district court committed reversible error by admitting relationship evidence under Minn. Stat. § 634.20 (2010). We affirm.

FACTS

On the morning of April 15, 2011, a paraprofessional at V.T.'s school overheard him telling some other students about an incident that occurred the night before. The paraprofessional took V.T. to a behavioral interventionist at the school, where V.T. stated that his father—appellant Anhdung Cong Tran—hit him twice, choked him and his mother, and pulled his mother out of the room by her hair.

The school informed social services about a possible child-abuse situation, and Officer Tomas Villanueva of the St. Cloud Police Department responded to the school. Officer Villanueva spoke with V.T., who told him that appellant struck him the night before and assaulted his mother after she intervened. The officer also spoke to V.T.'s mother, C.N., about the incident, including appellant's actions of assaulting her.

Based on this information, appellant was charged with one count of malicious punishment of a child in violation of Minn. Stat. § 609.377, subd. 3 (2010), and domestic assault in violation of Minn. Stat. § 609.2242, subd. 2 (2010), for acts committed against

C.N. The state later amended the complaint to add a second charge of domestic assault in violation of Minn. Stat. § 609.2247, subd. 2 (2010).

At trial, C.N. testified under subpoena that appellant struck V.T. with an open hand. V.T. testified that appellant "cuffed [him] upside the head" with an open hand. While acknowledging that he had told the behavioral interventionist that appellant had struck him twice, he stated that he had "exaggerated it" because he was angry. V.T. also denied that appellant had choked him.

After the trial, the jury found appellant guilty on all three counts. The district court entered a judgment of conviction on the malicious-punishment and one of the domestic-assault convictions, and imposed a 24-month sentence on the malicious-punishment-of-a-child conviction and a concurrent 365-day sentence on the domestic-assault conviction. This appeal follows.

D E C I S I O N

I. The evidence is sufficient to sustain appellant's conviction of malicious punishment of a child.[1]

When reviewing a challenge to the sufficiency of the evidence, an appellate court conducts a thorough analysis to determine whether the jury reasonably could find the defendant guilty of the offense based on the facts in the record and the legitimate inferences that can be drawn from those facts. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, the appellate court views the evidence in the light most favorable to the verdict and assumes that the jury believed the evidence supporting the

[1] Appellant does not challenge the sufficiency of the evidence supporting the domestic-assault convictions.

guilty verdict and disbelieved any evidence to the contrary. *Id.* If the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant is guilty of the charged offense, the appellate court will not disturb the verdict. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

"A parent . . . who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child." Minn. Stat. § 609.377, subd. 1 (2010). Appellant does not deny that an incident occurred between appellant and V.T. on April 14, but appellant's account of the incident differs from what V.T. allegedly reported to the school administrator. Appellant argues that the evidence is insufficient to sustain his conviction of malicious punishment of a child because the state did not prove beyond a reasonable doubt that his actions were any more than "reasonable force to discipline V.T.," falling short of the "unreasonable or excessively cruel" standard required for a conviction. *See* Minn. Stat. § 609.379, subd. 1(a) (2010) (allowing a parent to use reasonable force without a child's consent "to restrain or correct the child").

But appellant's argument fails to take into account the behavioral interventionist's testimony that V.T. told him that appellant, in addition to punching him and pulling his

mother out of the room by her hair, choked him.[2] When the evidence is viewed in the light most favorable to the verdict, the behavior interventionist's testimony allowed the jury to find that appellant had choked V.T. The jury therefore had a sufficient basis to find appellant guilty of malicious punishment of a child, and appellant's argument to the contrary is unavailing.

II. Evidence of appellant's prior acts of domestic assault against C.N. qualified as relationship evidence under Minn. Stat. § 634.20, and the district court therefore did not abuse its discretion by admitting such evidence.

Evidentiary rulings generally rest within the sound discretion of the district court, and a reviewing court will not reverse an evidentiary ruling absent a clear abuse of that discretion. *State v. Palubicki*, 700 N.W.2d 476, 485 (Minn. 2005). Appellant argues that the district court erred by admitting evidence regarding prior instances of uncharged domestic assault between appellant and C.N.—including one incident when he struck her in the face and broke her nose and a second incident that included appellant tearing the telephone from the wall when C.N. tried to call 911. The district court admitted the testimony over appellant's objection as relationship evidence under Minn. Stat. § 634.20.

The statute provides:

> Evidence of similar conduct by the accused against the victim of domestic abuse . . . is admissible unless the probative value is substantially outweighed by the danger of

[2] Appellant did not object to the admission of this evidence on hearsay grounds either at trial or now on appeal. Any argument that the evidence is not admissible as proof that appellant choked V.T. is therefore waived, and we do not consider it. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that appellate court will generally not consider arguments neither raised to nor considered by the district court); *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (stating issues not briefed on appeal are waived), *review denied* (Minn. Aug. 5, 1997).

> unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. "Similar conduct" includes, but is not limited to, evidence of domestic abuse . . . . "Domestic abuse" . . . [has] the meaning[] given under section 518B.01, subdivision 2.

Minn. Stat. § 634.20.

Evidence of prior domestic abuse by the accused against the alleged victim "may be offered to illuminate the history of the relationship, that is, to put the crime charged in the context of the relationship between the two." *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). Courts have treated relationship evidence differently than other "collateral" *Spreigl* evidence because "[d]omestic abuse is unique in that it typically occurs in the privacy of the home, it frequently involves a pattern of activity that may escalate over time, and it is often underreported." *Id.* at 161. Furthermore, "[d]omestic abusers often exert control over their victims, which undermines the ability of the criminal justice system to prosecute cases effectively." *Id.*

Despite the similarities between evidence admitted under this section and evidence admitted under Minn. R. Evid. 404(b), "the stringent procedural requirements of rule 404(b) do not apply to section 634.20 evidence." *State v. Meyer*, 749 N.W.2d 844, 849 (Minn. App. 2008). For example, the state is not required to provide notice of the evidence, nor is the state required to prove the evidence by a clear-and-convincing standard. *Id.* Evidence is admissible under the section as long as "(1) it is similar conduct by the accused, (2) it is perpetuated against the victim of domestic abuse or

against another family or household member, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." *Id.*

Appellant does not challenge the admission of the evidence on the first two prongs of the test articulated in *Meyer*, instead basing his challenge to the evidence's admissibility on his assertion that whatever probative value the evidence may have had was substantially outweighed by the risk of unfair prejudice. But appellate courts have "on numerous occasions recognized the inherent value of evidence of past acts of violence committed by the same defendant against the same victim." *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). Because the evidence of appellant's prior acts of assaults toward C.N. "illuminat[e] the relationship of [appellant] and [C.N.] and plac[e] the incident with which [appellant] was charged in proper context," the evidence had significant probative value. *See State v. Volstad*, 287 N.W.2d 660, 662 (Minn. 1980) (recognizing that evidence of prior assaults by the defendant against the victim may establish context for incident leading to charges and is therefore probative).

And when balancing probative value of evidence against the risk of potential prejudice, unfair prejudice "is not merely damaging evidence . . . ; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *Bell*, 719 N.W.2d at 641 (quotation omitted). Here, appellant argues that whatever probative value the evidence had was substantially outweighed by the risk that the evidence "may [have] influence[d] the jury to convict because of the prior bad act and not because the state proved [appellant's] guilt of the charged crime." But prior to the challenged testimony, the district court gave the following instruction to the jury:

> [T]he state's at this point going to attempt to introduce evidence of incidents that occurred before April 14, 2011. It's being offered for the limited purpose of demonstrating the nature of the relationship between [appellant] and [C.N.] and in order to assist you in determining whether [appellant] committed those acts with which he is charged in the complaint. [Appellant] is not, however, being tried for and may not be convicted of any behavior other than the charged offenses, and you are not to convict [appellant] on the basis of conduct alleged to have occurred prior to April 14, 2011, to do so might result in unjust double punishment.

The district court repeated its cautionary instruction just before closing arguments.

We have previously stated that any prejudicial effect of admitting relationship evidence is mitigated by a cautionary instruction similar to the one given here. *State v. Waino*, 611 N.W.2d 575, 579 (Minn. App. 2000). And appellate courts assume that juries follow instructions given by the district court and properly consider evidence. *State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009). The district court's cautionary instructions "lessened the probability of undue weight being given by the jury to the evidence." *See State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998). The district court therefore did not abuse its discretion by determining that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. *See State v. Olkon*, 299 N.W.2d 89, 101 (Minn. 1980) (noting that rulings on evidentiary matters, including whether the danger of unfair prejudice substantially outweighs the probative value of the evidence, rest within the district court's discretion).

Because (1) the evidence of appellant's prior acts involves similar conduct; (2) the conduct was perpetrated against the victim of domestic abuse; and (3) the probative value

of the evidence is not substantially outweighed by the risk of unfair prejudice, the district court did not abuse its discretion by admitting the evidence.

Affirmed.